

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

PUBLIC INTEREST LITIGATION NO.4 OF 2006

Maharashtra Adivasi Thakur Jamat Seva Mandal. ...Petitioner.

Vs.

State of Maharashtra & Ors.

...Respondents.

....

Mr. R. S. Apte with Mr. R.K. Mendadkar for the Petitioner.

Mr. V. A. Gangal, Special Counsel with Mr. P.M. Patil and Mr. S. S. Deshmukh, AGP for the Respondents.

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**CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.**

April 20, 2006.

ORAL JUDGMENT (Per Dr. D.Y. Chandrachud, J.) :

Rule, by consent of Counsel returnable forthwith.

Counsel appearing on behalf of the Respondents waives service.

By consent of Counsel and at the request of Counsel taken up for hearing.

2. The Petitioner claims to have instituted these

proceedings in the public interest to espouse the claim of persons belonging to the Thakur community which is listed as a Scheduled Tribe in the Presidential notification issued under Article 342 of the Constitution. The relief that has been sought is the issuance of a writ of Mandamus to the State Government to appoint Judicial Officers as Chairpersons of Scrutiny Committees functioning under the control of the Tribal Development Department. These Committees are entrusted with the function of verifying the authenticity of the claims of persons who seek recognition as members of a Scheduled Tribe. There is a challenge in these proceedings to a Government Resolution dated 7th December 2005. A declaration has been sought that the Scrutiny Committee at Nasik has no jurisdiction to apply the socio-cultural affinity test once the Committee comes to the conclusion that the documentary evidence on record shows the tribe of a person as Thakur. Finally, a direction is sought to the State to appoint Research Officers possessing qualifications laid down in the G.R. dated 9th July 1998.

3. In support of the plea that Judicial Officers should be appointed as Chairpersons of Scrutiny Committees investigating into Scheduled Tribe status, reliance has been placed on a judgment of a Division Bench of this Court dated 26th September 1986 in **Maharashtra Adivasi Thakur Jamat Seva Mandal, Chalisgaon vs. State of Maharashtra** (Writ Petitions 917 and 2088 of 1986) in which the following observations were made:

“The proceedings before the Scrutiny Committee are quasi-judicial in nature. Therefore, in our view also the Chairman of the Scrutiny Committee should be a District Judge so that the people will have confidence in the Committee. The Chairman will obviously be assisted by two other members who are experts in the field. Thus expert advice will be available to the Committee, while deciding the question. This might allay all the apprehensions about the decisions of the Scrutiny Committee and the procedure followed by it. We hope that the Government will consider this suggestion favourably.”

Similarly, reliance has also been placed on a decision of a Division Bench of this Court rendered on 14th September 2004 in a batch of cases (**Amol Narayan Wakkar vs. State of Maharashtra**, Writ Petition 6048 of 2004 and other Writ Petitions). The Division Bench in that case set aside an order of the Scrutiny Committee

disposing of nearly 200 cases by what was termed as a “common cryptic order”. The Division Bench observed that the order did not furnish reasons and there was no analysis of the documents that were relied upon. This Court noted that there was a serious complaint of the manner in which the Scrutiny Committees decided cases, leading to a proliferation of litigation under Article 226 of the Constitution. The Division Bench called upon the State Government to consider the suggestion as to whether the Scheduled Castes and Scheduled Tribes Scrutiny Committees should be reconstituted by appointing at least one judicial officer thereon who would preside over the Committees. The suggestion of the Division Bench was in the following terms:

“Having regard to the fact that the role, duty and functioning of these committees is akin to the judicial work we feel that it would be desirable that at least one member of the committee should be a trained judicial officer. We, therefore, suggest to the State Government to consider reconstituting the Caste/Tribe Scrutiny Committee and appoint at least one judicial officer on these committees to be presided over by such a judicial officer. The State Government is directed to consider this suggestion and take appropriate decision expeditiously and preferably within a period of three months.”

The grievance of the Petitioner is that the manner in which Scrutiny Committees discharge their duties has drawn adverse judicial comment on several occasions and that it is necessary therefore, to exercise the jurisdiction of the Court in a Public Interest Litigation by directing the appointment of a Judicial Officer as Chairperson of the Committee.

4. While considering the submission, it would, at the outset, be necessary to advert to the judgment of the Supreme Court in **Kumari Madhuri Patil Vs. Commissioner Tribal Development**, (1994) 6 SCC 241, in which the Supreme Court issued comprehensive directions for streamlining the procedure for the issuance of social status certificates. The Supreme Court inter alia directed that all State Governments shall constitute three member committees for verifying caste certificates issued to persons who claim to belong to Scheduled Castes, Scheduled Tribes or, as the case may be, OBCs. The constitution of these Committees was provided for in the judgment of the Supreme Court in terms of the following directions:

“4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.”

Subsequently, in an interim application filed before the Supreme Court in **Kumari Madhuri Patil vs. Addl. Commissioner, Tribal Development, Thane**, (1997) 5 SCC 437, the Supreme Court issued certain directions by which instead of one committee of three officers, there would be three Scheduled Tribe/Caste Scrutiny Committees comprising of five members with a quorum of three members to take a decision. The order of the Supreme Court was thus :

“As regards prayer (b) read with direction No.(iv) of the Order of this Court, we too appreciate the inconvenience caused due to vast area of the State. Therefore, instead of one committee of three officers, there will be three Scheduled Tribe/Caste Scrutiny Committees comprising of five members with quorum of three members, as suggested in para 4 of the directions, to take a decision.

At Pune, Nasik and Nagpur, six Caste Scrutiny Committees for SCs, Denotified Tribes, Nomadic Tribes, Other Backward Classes and the Special Backward Category in existence at Mumbai, Pune, Nasik, Aurangabad, Amravati and Nagpur would continue to scrutinise the certificates issued by the respective officers and take a decision in that behalf. In this regard, it is also suggested by Shri Dholakia, learned Senior Counsel for the applicant, that in case any certificate has been wrongfully refused by the certificate issuing authority, the aforesaid Committees also would go into the question and decide in that behalf, whether refusal was wrongful and in case it finds that the refusal was wrongful, they are at liberty to direct the authority to grant the certificate.”

5. In the State of Maharashtra, the State Legislature enacted the Maharashtra Scheduled Castes and Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000. Section 6(1) of the Act provides for the constitution of Scrutiny Committees for the verification of Caste certificates. Section 6(1) is as follows:

“(1) The Government shall constitute by notification in the Official Gazette, one or more Scrutiny Committee(s) for verification of Caste Certificates issued by the Competent Authorities under sub-section (1) of Section 4 specifying in the said notification the functions and the area of jurisdiction of each of such Scrutiny Committee

or Committees.”

In exercise of the powers conferred by sub-section (1) of Section 6 of the Act, the Government constituted Scrutiny Committees by a notification dated 4th June 2003. Six Committees were constituted by the notification for the Scheduled Tribes. These six Committees are based at Thane, Nasik, Pune, Aurangabad, Amravati and Nagpur. The membership of the Committees consists of (i) The Commissioner/Director for Tribal Research and Training Institute at Pune; (ii) Additional Commissioner for Tribal Development; (iii) Deputy Director (Research); (iv) Senior Research Officer; and (v) Research Officer. The provisions of the Act were challenged before this Court. A Full Bench of this Court dealt with the challenge in **Sujit Vasant Patil vs. State of Maharashtra**, 2004 (4) ALL M.R. 537. The argument that the Committee discharges a judicial function and that accordingly, the Act was ultra vires for having conferred judicial powers on an administrative authority was specifically urged before and negated by the Full Bench. The Full Bench held that the Supreme Court in **Madhuri Patil**’s case

provided for the constitution of these Scrutiny Committees and in view of that judgment, it was not open to the Court to countenance such a submission. In that regard the observations of the Full Bench in paras 14 and 15 merit emphasis and were as follows:

“So far as the objection raised on behalf of the Petitioner that the Act does not lay down any qualification for being appointed as a member of the Scrutiny Committee is concerned, we find that the Supreme Court itself in its judgment in Madhuri Patil's case has laid down as to how the Scrutiny Committee is to be constituted. If one compares the detailed directions that have been framed by the Supreme Court contained in paragraph 13 of the judgment in Madhuri Patil's case and the provisions of the Act No.XXIII of 2001, one finds that the Act itself is molded on the directions issued by the Supreme Court and therefore, the State will have to constitute the Scrutiny Committee in accordance with the directions issued by the Supreme Court.

-15. We have referred to above that it was argued before us that to determine the caste claim is a judicial power of the State and that has been conferred on the administrative authority. In the face of the judgment of the Supreme Court in Madhuri Patil's case this argument has to be rejected. The Supreme Court has provided for constitution of the Scrutiny Committee and it consists of Administrative Officer and in our opinion, in the face of the judgment of the Supreme Court in Madhuri Patil' s case no such submission can be made.”

6. On 28th January 2004, the State Government moved the

Supreme Court in IA Nos.6 to 9 of 2004, noting that a Cabinet decision has been taken on 18th June 2003 for changing the composition of the Scrutiny Committees so as to inter alia provide for the inclusion of retired District Judges as Chairpersons of the Committees. I.As 6 to 9 were dismissed by the Supreme Court on 19th July 2004.

7. In these circumstances, what emerges from the aforesaid narration is that (i) The constitution of Scrutiny Committees was specifically provided for in the judgment of the Supreme Court in **Kumari Madhuri Patil vs. Additional Commissioner, Tribal Development** (1994) 6 SCC 241; (ii) That by directions dated 28th April 1997 on I.A.s filed by the State Government in **Madhuri Patil'** case (1997) 5 SCC 437 the Supreme Court granted certain modifications, to the extent elaborated therein; (iii) The specific prayer made by the State in I.As. 6 to 9 of 2004 before the Supreme Court for a further modification in the Constitution of the Committees so as to inter alia provide for the appointment of retired District Judges as

Chairpersons of the Committees was rejected by the Supreme Court on 19th July 2004; (iv) The State Legislature enacted Act 23 of 2001 so as to provide inter alia for a statutory status to the Scrutiny Committees and in exercise of powers conferred under Section 6(1) a notification was issued by the State Government providing for constitution of the Committees; (v) The Full Bench of this court held in **Sujit Vasant Patil's** case, 2004 (4) ALL M.R. 537 that in view of the judgment of the Supreme Court in **Madhuri Patil'** scase, a challenge to the constitution of the Scrutiny Committees on the ground of the non-inclusion of a Judicial Officer could not be countenanced and that the Constitution of the Committees provided by Maharashtra Act 23 of 2001 was moulded on the directions issued by the Supreme Court.

8. It has, however, been submitted that the judgment of the Supreme Court does not exclude the possibility of the appointment of a Judicial Officer on the Scrutiny Committees. We cannot possibly countenance this submission. Once the Supreme Court has laid down the constitution of the Committees, this Court cannot

and shall not issue any direction that would not be in consonance with the directions of the Supreme Court. The matter has now been set at rest in the judgment of the Full Bench.

9. In this background, the Government Resolution dated 7th December 2005 which sanctions the creation of six posts of Deputy Chairpersons to the Scheduled Tribe Certificate Scrutiny Committees in the rank of Joint Director or Joint Commissioner in the pay scale of Rs.12,000-375-15500 and for filling up the aforesaid posts by promotion from the cadre of Deputy Director/Deputy Commissioner, Tribal Development cannot be interfered with on the ground that Government had rescinded its policy decision dated 12th August 2004 in the matter of appointing Judicial officers to the Scrutiny Committees.

10. In so far as the appointment of the Research Officers is concerned, we may observe that the judgment of the Supreme Court in **Madhuri Patil's** case requires the appointment of a Research Officer who has intimate knowledge in identifying Tribes,

Tribal Communities, part of or groups of Tribes or Tribal Communities. The title to the GR dated 9th July 1998 issued by the State Government does specify certain qualifications for appointments of Research Officer though the body of the G.R. does not elaborate thereon any further. In our view, the ends of justice would be met if a direction is issued to the State Government to ensure that Research Officers who are associated with Scrutiny Committees meet the requirements that are contained in the directions issued by the Supreme Court in **Madhuri Patil's** case. This Court has been assured that such an exercise would be carried out. We, therefore, direct the State Government to constitute a Committee consisting of the Secretary, Tribal Development and the Secretary, Law and Judiciary Department to scrutinise the case of each of the Research Officers or, as the case may be, Senior Research Officers associated with the Scrutiny Committees with reference to whether these officers have the background and the qualifications to meet the directions issued by the Supreme Court in **Madhuri Patil's** case and the Government Resolution dated 9th July 1998. We direct that the

Committee shall carry out this exercise expeditiously and that it shall in any event be completed within a period of two months from today. In the event that the Committee comes to the conclusion that the Research Officers or, as the case may be, Senior Research Officers do not fulfill the required qualifications, necessary steps shall be taken within a period of two months thereafter for carrying out a fresh exercise for selecting officers for appointment and completing the same as would ensure compliance with the qualifications enunciated in the judgment of the Supreme Court.

11. We are also of the view that it is necessary for the State Government to ensure that a scheme is formulated and duly implemented for providing training to the members of the Scrutiny Committees. The members of these Committees are expected to be experts in the field but, at the same time, it would be necessary to impart to them basic training in regard to the discharge of their duties and functions which partake a judicial nature and character. Without circumscribing or defining the precise areas in which

training should be imparted, we direct that the Secretary, Tribal Development in the State Government shall forthwith and no later than a period of two months from the date of this order put into place a scheme of imparting training in consultation with the Secretary, Law and Judiciary Department. We direct that the State Government shall thereafter take immediate steps to implement the scheme and for imparting appropriate training to the members of the Committees. In the circumstances, we have thus, dealt with the submissions which were urged before us.

12. We may note that one of the prayers in this petition is that this Court issue directions to the effect that the Committees have no jurisdiction to go into the socio-cultural affinity test if there is documentary evidence to show that the tribe of the candidate is Thakur. No such directions can be issued in a PIL as to the view which Scrutiny Committees should form in their judicial or quasi-judicial duties. The Court has also been informed that the issue is pending in separate proceedings before the Supreme Court. In the circumstances though a prayer has been included in the prayer

clauses of the Writ Petition, we wish to clarify that no relief has been sought in that regard during the course of the oral submissions in view of the fact that the matter awaits final adjudication by the Apex Court.

13. For all these reasons, we are of the view that the reliefs that have been sought in these proceedings for appointment of Judicial officers as Chairpersons on the Scrutiny Committees cannot be granted. The petition shall stand disposed of in the light of the directions issued herein above. There shall be no order as to costs.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.